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8 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 CURTIS S. THOMPSON,)

11 Plaintiff,)

12 v.)

13 SCOTT O'TOOLE, *et al.*,)

14 Defendants.)
_____)

CASE NO. C05-2064-JLR-MJB

ORDER RE: PENDING DISCOVERY
MOTIONS AND PLAINTIFF'S MOTION
TO AMEND COMPLAINT

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16 This is a civil rights action brought under 42 U.S.C. § 1983. This matter comes before the
17 Court at the present time on the following motions: (1) plaintiff's motions for discovery (Dkt.
18 No. 33 and 38); (2) plaintiff's motions to compel discovery (Dkt. Nos. 49, 53 and 65); and, (3)
19 plaintiff's motion for leave to amend (Dkt. No. 54)¹.

20 This Court, having reviewed plaintiff's motions, the King County defendants' responses
21 thereto, and the balance of the record, does hereby ORDER as follows:

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23 ¹ Many of these motions raise issues related to both the King County defendants and to the
24 lone City of Seattle defendant. This Order addresses the motions only as they pertain to the King
County defendants. To the extent these motions involve the City of Seattle defendant, they have
been addressed in a Report and Recommendation issued the same date as this Order.

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1 (1) Plaintiff's motions for discovery (Dkt. Nos. 33 and 38) are STRICKEN. These
2 "motions" are, in fact, merely discovery requests directed to the defendants. Discovery requests
3 should not be filed with the Court, but should instead be sent directly to defendants.

4 (2) Plaintiff's first motion to compel discovery (Dkt. No. 49) is DENIED. Plaintiff's
5 first motion to compel arises out of his August 3, 2006, discovery requests. Plaintiff requested
6 therein that he be provided with all "files and complaints" made against defendants Burach, Eigo,
7 Eltayeb, Ingersoll, and Pierson for "abuse" and for "excessive use of force." Plaintiff also
8 requested that he be provided with all complaints of abuse filed in the jail through the grievance
9 or internal affairs process, any law suits involving physical abuse or violations of prisoners rights,
10 disciplinary records of officers at the jail, and documents related to training methods for certain
11 jail procedures.

12 In his first motion to compel, plaintiff seeks to compel the production of "any and all
13 grievances, complaints, investigations and suits" against defendants. Plaintiff asserts that he
14 requires information regarding "past misconduct" in order to establish "proof of motive,
15 opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident"
16 under FRE 404(b) and FRE 405. Plaintiff also seeks to compel the production of "procedures" to
17 "subdue or confront" certain types of individuals.

18 The King County defendants argue that they have properly responded to plaintiff's
19 discovery requests and that the documents at issue here should be ruled non-discoverable. More
20 specifically, they argue that they should not be compelled to produce information and records
21 relating to the defendants' disciplinary histories which are unrelated to plaintiff because such
22 documents would not be admissible for the purposes cited by plaintiff. Defendants further argue
23 that disclosure of documents or information regarding defendants' disciplinary histories, other
24 than those already provided to plaintiff, would be an invasion of the defendants' privacy.

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1 Defendants have submitted for *in camera* review the documents which are apparently at issue at
2 this juncture.

3 To the extent plaintiff seeks to compel the production of documents which will establish
4 “past misconduct” on the part of defendants, including defendants’ disciplinary histories or other
5 institutional records related to these defendants, but which do not relate to plaintiff himself,
6 plaintiff’s motion to compel is denied. Generally, each party has the right to discover “any
7 matter, not privileged, that is relevant to the claim or defense of any party.” *See* Fed. R. Civ. P.
8 26(b)(1). “Relevant information need not be admissible at the trial if the discovery appears
9 reasonably calculated to lead to the discovery of admissible evidence.” *Id.* This Court has
10 reviewed the files submitted for *in camera* review and concludes that nothing in those files would
11 be admissible under FRE 404(b) nor would the information contained therein be likely to lead to
12 the discovery of admissible evidence.

13 To the extent plaintiff seeks to compel defendants to produce “procedures” to “subdue or
14 confront’ certain types of individuals” his motion to compel is also denied. Plaintiff requested in
15 his first set of discovery requests that defendants produce training materials pertaining to
16 subduing hostile inmates. In their original response to that discovery request, defendants
17 indicated that there are no materials specific to that request. It thus appears that defendants have
18 already adequately responded to that request. Any additional materials which plaintiff may now
19 seek to obtain are not properly pursued through a motion to compel.

20 (2) Plaintiff’s second motion to compel (Dkt. No. 53) is DENIED. Plaintiff’s second
21 motion to compel appears to arise out of his August 23, 2006, discovery requests. Plaintiff
22 requested therein that he be provided with “any & all files, e-mails & inter-departmental records”
23 concerning himself. In addition, plaintiff requested the names and addresses of inmates or
24 witnesses in the area of incidents which occurred at the King County Jail on April 7, 2005,

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1 January 21, 2006, and March 11, 2006. He also appeared to request the names and addresses of
2 any officers who responded to these incidents even if those officers were not identified in any
3 written report.

4 In his second motion to compel, plaintiff seeks to compel production of “court dockets &
5 reports of Internal Investigations Unit of the King County Jail & Sgt. Matthew Owens” related to
6 his complaint against jail staff arising out of an April 7, 2005, incident. He also appears to once
7 again be seeking to compel production of documents related to defendants’ disciplinary histories.
8 For the reasons set forth above, plaintiff’s request to compel production of defendants’
9 disciplinary histories or other institutional records related to these defendants, but which do not
10 relate to plaintiff himself, is denied.

11 To the extent plaintiff seeks to compel the production of Internal Investigation Unit files
12 and reports of Sgt. Matthew Owens related to the April 7, 2005, incident, plaintiff’s motion to
13 compel is also denied. It does not appear from the record that plaintiff previously requested these
14 documents and it is not appropriate to seek production of documents in the first instance by way
15 of a motion to compel. Moreover, it is not clear that these documents are even in the care,
16 custody or control of the named defendants.

17 Finally, to the extent plaintiff seeks to compel production of the court docket for April 7,
18 2005, plaintiff’s motion to compel is denied. It appears from the record that defendants have
19 advised plaintiff that such record is not available. (*See* Dkt. No. 65.) The Court cannot compel
20 the production of documents which do not exist.

21 (3) Plaintiff third motion to compel (Dkt No. 65) is STRICKEN. The document
22 which was identified by court staff, and docketed, as a motion to compel is actually entitled
23 “Supplemental Pleading to Compel & Extension.” Plaintiff seeks, by way of this document, to
24 compel the production of certain documents and to obtain additional time to submit

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1 interrogatories to defendants. Defendants have not responded to this document, likely because it
2 was not properly filed as a motion. If plaintiff wishes for the Court to take action on the requests
3 set forth in this document, he must file a proper motion.

4 The Court takes this opportunity to remind plaintiff that any motion filed with the court
5 must include in the caption the date the motion is to be noted for consideration on the court's
6 calendar. *See* Local Rule CR 7(b). Non-dispositive motions are properly noted for the third
7 Friday after filing and service. Local Rule CR7(d)(3). None of plaintiff's recent motions
8 included a noting date. Plaintiff's pro se status does not relieve him of the obligation to follow
9 the Court's rules. Henceforth, any motion presented to the Court which does not include a noting
10 date will be STRICKEN and will therefore receive no consideration.

11 (4) Plaintiff's motion to amend his complaint (Dkt. No. 54) is DENIED. Plaintiff, by
12 way of his motion to amend, seeks to add as defendants in this action Sergeant Gau and
13 Correctional Officer P. Chu. He asserts in his motion that these individuals are "personally
14 involved, or worked to cover up the incident & medical assistance." Defendants oppose this
15 motion on the grounds that plaintiff has failed to allege any facts demonstrating that either of
16 these proposed new defendants personally participated in causing harm of constitutional
17 dimension. Defendants are correct that plaintiff's motion to amend contains insufficient facts to
18 adequately allege a cause of action against either of these proposed new defendants.

19 The Court notes that plaintiff has now filed a supplement to his motion to amend in which
20 he alleges additional facts in support of his request to add Correctional Officer P. Chu and
21 Sergeant Gau. Defendants have not filed any response to this supplemental pleading, likely
22 because it was not presented to the Court as a motion. However, even assuming plaintiff has
23 identified sufficient facts to support his claims against these proposed defendants, plaintiff has not
24 submitted for the Court's review any amended pleading setting forth those claims. The Court

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1 will not entertain a motion to amend which is not accompanied by a proposed amended
2 complaint.

3 (5) At this juncture, discovery has been stayed pending resolution of the competency
4 issue in plaintiff's ongoing criminal proceedings. As discovery has been stayed, the Court deems
5 it appropriate to STRIKE all pending pretrial deadlines. Those deadlines will be re-set at a later
6 date. The parties are directed to provide the Court with a report regarding the status of plaintiff's
7 criminal proceedings not later than December 1, 2006. The parties should include in that report
8 their respective positions regarding how this matter should proceed in light of the pending
9 criminal proceedings.

10 (6) The Clerk shall send copies of this Order to plaintiff, to counsel for defendants,
11 and to the Honorable James L. Robart.

12 DATED this 17th day of November, 2006.

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15 MONICA J. BENTON
16 United States Magistrate Judge
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